

Congressional and Intergovernmental Affairs. Effective October 31, 1995.

National Mediation Board

Confidential Assistant to a Board Member. Effective October 31, 1995.

Office of National Drug Control Policy

Director, Communications Planning to the Director, Office of National Drug Control Policy. Effective October 19, 1995.

Small Business Administration

Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective October 31, 1995.

Press Secretary and Special Assistant to the Assistant Administrator for Communications. Effective October 31, 1995.

United States Tax Court

Secretary (Confidential Assistant) to the Judge. Effective October 11, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., P. 218
Office of Personnel Management

Lorraine A. Green,

Deputy Director.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-21588; 812-9632]

Wellington Underwriting plc; Notice of Application

December 8, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Wellington Underwriting plc.

RELEVANT ACT SECTION: Exemption requested under Section 6(c).

SUMMARY OF APPLICATION: Applicant, a United Kingdom company engaged in the business of insurance, seeks an order granting it a conditional exemption from all provisions of the Act. Because of its listing on the London Stock Exchange as an "investment company," Applicant seeks to clarify its status prior to a proposed offer and sale of its American Depositary Shares in the United States to assure that it will not be required to register as an investment company under the Act.

FILING DATES: The application was filed on June 16, 1995, and amended on October 17, 1995. Counsel for Applicant has agreed to file a further amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 2 Minster Court, Mincing Lane, London, EC3R 7FB, England.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942-0564 or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a public holding company incorporated under the laws of England and Wales, was formed for the purpose of allowing investors to participate with limited liability in underwriting insurance risks at Lloyd's of London ("Lloyd's"). Applicant underwrites at Lloyd's through five wholly-owned subsidiaries (the "Subsidiaries"). The Subsidiaries have received approval from Lloyd's as "Corporate Members," i.e., corporations acting as insurance underwriters through syndicates at Lloyd's. The only securities which the Applicant will own are those of the Subsidiaries.

2. On November 23, 1994, Applicant completed a placement of 17,250,000 Ordinary Shares. This included a private placement in the United States of 127,094 American Depositary Shares (representing 1,270,940 Ordinary Shares) to eleven "accredited investors" within the meaning of Regulation D under the Securities Act of 1933 (the

"1933 Act"). The balance of Applicant's Ordinary Shares were placed with 76 holders outside the United States.

3. Applicant's shares are traded on the London Stock Exchange ("LSE"), where Applicant is listed as an "investment company." To be listed on the LSE, an issuer must have three years of audited financial statements unless it lists as an "investment company."¹ Applicant sought to be listed under this category in order to facilitate an immediate listing on the LSE which otherwise would not have been possible for a new issuer. Applicant is not otherwise treated as an investment company in the United Kingdom.

4. The Subsidiaries commenced operations on January 1, 1995, engaging exclusively in the insurance business of acting as Corporate Members of syndicates underwriting insurance at Lloyd's. The Subsidiaries underwrite insurance at Lloyd's through syndicates managed by Wellington Underwriting Agencies Limited, a wholly-owned subsidiary of Wellington Underwriting Holdings Limited. Pursuant to the LSE Listing Rules and the rules of the Council of Lloyd's (the "Council"), the central body that regulates the affairs of the Lloyd's market, the Subsidiaries will not transact any other business.

5. The Subsidiaries are regulated in the U.K. as insurance companies, not investment companies. Because they are Corporate Members of Lloyd's, the Subsidiaries must comply with various provisions of the U.K. Insurance Companies Act 1982 and are subject to oversight by the Secretary of State for Trade and Industry. Most notably, U.K. regulation focuses on solvency, the fundamental principle of insurance regulation, by requiring audited statements and actuarial certificates for Members' accounts, trust funds for premiums, and margins of solvency. The British Department of Trade and Industry also has significant powers to regulate the market and affairs of Members in the event that either Lloyd's underwriters taken as a whole or any Member fails to satisfy regulatory requirements. These powers include, among others, the ability to regulate the investment and custody of assets at Lloyd's, to limit (or terminate) the writing of insurance, and to direct the actions of the Council or other persons at Lloyd's.

¹ To qualify as an "investment company" under LSE rules, no more than 20% of the Applicant's assets on a consolidated basis may be invested in the securities of any one company—including its own subsidiaries, and the Applicant must be a passive investor and not control the companies in which it invests, other than companies through which it invests (i.e., the Subsidiaries).

6. At the present time, the Applicant's shares are beneficially owned by fewer than one hundred persons in the United States, and the Applicant is not making, and does not presently propose to make, a public offering of its securities in the United States. The Applicant intends, however, to raise additional capital, which may include another offering of American Depositary Shares to additional United States investors through a further private placement.

Applicant's Legal Analysis

1. Section 3(a)(1) defines "investment company" to mean, as here relevant, any issuer that holds itself out as being engaged primarily in the business of investing or trading in securities. Because the Applicant is listed on the LSE as an "investment company," it arguably has held itself out as an investment company within the meaning of section 3(a)(1).²

2. Applicant requests an exemption from all provisions of the Act pursuant to section 6(c). Section 6(c) provides, as here relevant, that the SEC, by order upon application, may exempt any person from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant submits that the requested relief meets the exemptive standards established by section 6(c). It asserts primarily that it is engaged through the Subsidiaries in the business of an insurance company, and does not operate as an investment company for purposes of the Act. In this regard, even though the Applicant's memorandum of association gives it the power to carry on the business of both an investment company and an insurance business, it is not treated as an investment company under the U.K. Companies Act or as an investment trust for tax purposes. Similarly, the Applicant is not treated as a collective investment scheme or an authorized unit trust scheme under the U.K. Financial Services Act or as an undertaking for collective investment in transferable securities ("UCITS") under directives of the European Union. In addition, the daily trading price of the

Applicant's shares on the LSE is quoted in the Financial Times under the caption "Insurance" and not "Investment Trusts." While the 1994 prospectus for the Applicant's shares introduced it as an investment company, the stated purpose of the offering was to enable investors to underwrite insurance with limited liability through Lloyd's syndicates managed by Wellington Underwriting Agencies Limited. Based on the foregoing, Applicant argues that the Act's purpose would not be served by applying it to the Applicant merely because it is listed, for reasons of convenience, as an investment company on the LSE.

4. Applicant also submits that exemptive relief would be consistent with the purposes intended by specific policies and provisions of the Act. Section 3(c)(3) of the Act excludes from the definition of "investment company" domestic insurance companies. Rule 3a-6 provides that foreign insurance companies are also not subject to the provisions of the Act. Applicant represents that its Subsidiaries fall within the requirements of rule 3a-6.³ Applicant notes that United States holding companies for insurance companies are excepted from the definition of investment company by section 3(c)(6). Because of its status as a holding company whose only operations are the ownership of the Subsidiaries, the Applicant is a foreign insurance company holding company. The SEC, upon adopting rule 3a-6, made it clear that foreign insurance company holding companies should be treated under the Act on the same basis as United States insurance company holding companies.⁴

Applicant's Conditions

Applicant agrees that any order of the SEC granting the exemptive relief requested by the application may be made subject to the following conditions:

³ Rule 3a-6 defines "foreign insurance company" as an insurance company organized under the laws of another country that is regulated as such by that country's government, that is engaged predominantly in writing or reinsuring insurance agreements of the type specified in section 3(a)(8) of the 1933 Act, and that is not operated for purposes of evading the provisions of the Act. Applicant intends to rely on an opinion of counsel to the effect that its Subsidiaries are exempt from registration under the Act because they are foreign insurance companies within the meaning of the rule. Applicant does not request SEC review or approval of counsel's opinion, and acknowledges that the SEC takes no position as to its availability.

⁴ See Investment Company Act Release No. 18381 (Oct. 29, 1991).

1. No Subsidiary will be an "investment company" as defined by the Act.

2. Applicant will continue to operate, either directly or indirectly, only in the business of insurance.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-30527 Filed 12-14-95; 8:45 am]

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[Release No. 35-26427]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 8, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 2, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70-8733)

The Southern Company ("Southern"), 270 Peachtree Street, N.W., Atlanta, Georgia 30346, a registered holding company, and its subsidiaries, Mobile Energy Services Holdings, Inc. ("Mobile Energy"), Southern Electric International, Inc. ("Southern Electric"), SEI Holdings, Inc. ("Holdings"), Southern Electric Wholesale Generators, Inc. ("Domestic Holdings"), and SEI

² The Applicant's assets consist entirely of securities of the wholly-owned Subsidiaries, which in turn hold assets in the form of a Lloyd's deposit that is invested in securities. Thus, the Subsidiaries, and consequently the Applicant itself, would be deemed investment companies under section 3(a)(3), except for, as discussed below, the Subsidiaries' status as foreign insurance companies under rule 3a-6.